

**Removing Federal Services Acquisition Barriers
And Balancing Public and Private Interest**

**Task Force on Service Contracting
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**Established by
Contracts Services Association**

**In Conjunction With
Professional Services Council
National Defense Industrial Association
Information Technology Association of America**

EXECUTIVE SUMMARY

A service is considered to be any “thing,” or “class of procurement,” that is not manufactured, or does not require manufacturing – in other words, a service is not a tangible product, even though the service itself may produce some tangible outcome or output.

Over the past decade, Federal spending has shifted from primarily acquiring goods (hardware or supplies and weapons systems) to acquiring services. As of 2004, Federal dollars spent on services exceeded 50% of the total Federal budget for the Department of Defense (DOD), and more than 75% is being spent within NASA and the civilian agencies. Just as the Federal budget demographics have shifted so has the private sector, with service contractors reaping the benefits and expanding their businesses; traditional hardware suppliers are moving into the service contracting arena; and increasing numbers of small business are participating in the Federal services market.

The service contracting sector endorses the acquisition and post-award administration processes used in the commercial marketplace. However, even though the service provider business area is becoming one of the fastest growing segments within the Federal government, the ability to successfully compete in the Federal marketplace for services is more difficult than it should be. This difficulty results from the myriad of unique Federal rules and regulations, the uncertainties associated with performance-based processes and procedures used in the Federal arena, and the impact of various special Federal labor laws, (e.g., Service Contract Act, etc.) that may apply. The Federal acquisition community should work to ensure that the Federal government utilizes the best the commercial market has to offer while adhering to the core public laws that form the basis for Federal acquisitions.

To date, service contracting has been a lowly stepchild compared with its “sexier” counterpart in hardware procurements; and reforming the way services are acquired has lagged behind improvements in hardware and weapons systems acquisition. The passage of the 2003 Services Acquisition Reform Act (SARA) was a major step forward in improving the contracting practices for services in order to provide the Federal government with access to the best in commercial practices for services.

Yet SARA is only the tip of the iceberg. Recognizing this fact, the Contract Services Association, in conjunction with several of its industry partners, established a *Service Contracting Task Force*. The purpose of the Task Force was to review – with a clean slate approach – relevant statutes and regulations, starting with Part 37 (Service Contracting) of the Federal Acquisition Regulation (FAR). The Task Force also was charged with balancing the rights of both the private and public sectors, ensuring that any recommendations were in the best interests of the Government and the U.S. taxpayer. In mid-2004, four working groups were established. The Task Force members determined that these four working groups covered the dominant issues affecting service contracting: categories of services, performance-based acquisition (which evolved into acquisition management and planning), multiple agency contracting vehicles (e.g., Federal services schedules and other multiple award contracts), and Part 37 (Service Contracting regulations).

“If we were to start from scratch, where would we go?” was the premise with which each working group began. The findings include:

Categories of Services. The initial effort focused on developing a listing of the dominate categories of services, and analyzing any unique characteristics that might impact on the acquisition of that category. Ultimately, it was determined that services could simply be broken into two components, commercial services and non-commercial or developmental services – no separate listing of categories is needed beyond that. The Task Force proposes three legislative recommendations relating to commercial services, Time and Material/Labor Hour commercial contracting, and Assistance and Advisory Services. The key regulatory recommendation of the Task Force is to amend FAR Part 2.1 (Definitions) to place “services” on an equal footing with items. In addition, the Task Force recommends moving cost reasonableness requirements of catalog and market prices to FAR Parts 12, 13 and 15 since assessing cost reasonableness is a critical component of sound commercial service acquisition.

Performance-based Acquisition. Originally, the intent was to examine the broader scope of “service” contracting versus the recent trend toward performance-based acquisition (PBA). It was determined that by highlighting “performance-based” contracting, officials focus their attention on methodology, rather than the necessary and broader focus on acquisition planning – a strategy or approach that asks: “what is the requirement” and “how best can the needs of the Government be met?” With regard to PBA, no further legislative changes are needed since Congress already has taken significant steps toward promoting PBA. Rather, a greater emphasis on “services” and contract methodology will enhance and support the FAR and the procurement/project management community in acquisition planning, to include post-award management and oversight. With that in mind, a thorough review of the FAR was undertaken, and the Task Force recommends several regulatory changes (e.g., to FAR Part 7 and 15). It should be noted that specific agency FAR supplements and implementing guidance also may require revision.

Multiple Agency Contracting Vehicles. Where Schedules contracts and other multiple award vehicles were long reserved for spares and support to weapons in the inventory, these same mechanisms increasingly are the contract vehicles of choice for services. There also is a significant shift away from agency unique contract vehicles and agency unique requirements. The Task Force recommendations focus on the General Services Administration Schedules, and methods to improve the ability of agencies to maximize the clear and unique benefits afforded by the Schedules.

Part 37 (Service Contracting). Originally formed to review small business issues, it was determined that attempting to resolve “hot button” issues such as contract bundling, set-asides or size standards is easily the subject for a future Task Force. Therefore, the focus turned to a section-by-section analysis of FAR Part 37 (Service Contracting) to determine which sections needed general revision, and which needed some modifications to provide contracting officers sufficient guidance in using small businesses as service providers. The Task Force recommends several initial revisions to FAR Part 37. The Task Force, however, believes that further analysis is necessary to determine whether the policies in FAR Part 37 would be better realigned in other Parts of the FAR.

In sum, the Task Force determined that many of the processes, procedures, and policies contained in the Federal Acquisition Regulation and its various supplements need to be revisited to assure the Government has full and free access to all commercial capabilities available. Issues such as those outlined in this report, as well as contract type, labor laws, and non performance-based requirements need a critical analysis to ensure that as many barriers to the Federal services sector be eliminated. Certain barriers (e.g., the need for security clearances and the lengthy resulting screening process) may never be effectively reduced – and were outside the purview of this review. Those barriers, however, that inhibit sound business practices need to be viewed with a critical eye to ensuring the Federal services sector takes advantage of the efficiencies and innovations available from the commercial services marketplace.

A copy of the full report can be found at www.csa-dc.org or www.acqnet.gov/aap.